

ARTICLE 17: ANGEL'S LAW

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§ 9-17-1 FINDINGS AND INTENT.

City Council finds that dangerous dogs threaten the health and safety of inhabitants of the city, especially young children and others unable to protect themselves from vicious attacks. City Council finds that owners who allow their dangerous dogs to run loose in the city or fail to safely and humanely restrain those dogs on their property are criminally and civilly liable for the harm those dogs cause. City Council finds that dogs that have mortally wounded either a person or a companion animal without provocation or that have attacked again after previously being deemed as dangerous dogs pose an immediate danger to the health and safety of the inhabitants of the city and should be subject to permanent removal. City Council further finds that owners who allow their dangerous dogs to run loose in the city or fail to safely and humanely restrain those dogs on their property create a nuisance that must be abated pursuant to the city's civil remedial powers under state law. City Council finds that it is reasonable to prevent the worst offenders from being able to own dogs in the City of Albuquerque.

(Ord. 2-2005; Am. Ord. 2016-009)

§ 9-17-2 SHORT TITLE.

This article shall be referred to as "Angel's Law" and may sometimes be referred to herein as "this ordinance."

(Ord. 2-2005)

§ 9-17-3 DEFINITIONS.

For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AACC WEBSITE. An internet site maintained by AACC and accessible by the public and containing among other things a data base pertaining to dangerous dogs.

AGGRESSIVE. A dog that is objectively observable by a reasonable person as unnaturally and unjustifiably hostile toward humans or other animals.

ALBUQUERQUE ANIMAL CARE CENTER or AACC. Any premises, locations or buildings designated as suitable by the Mayor for the care, custody and maintenance of animals seized by the city.

ANIMAL. Any living nonhuman mammal, bird, reptile, or amphibian not including insects.

ANIMAL CONTROL OFFICER or **ACO**. Any person employed by the city, assigned to the Albuquerque Animal Care Center and charged with enforcement of this article and other animal laws or with any other task assigned by the Mayor from time to time.

ANIMAL SERVICE OFFICER or **ASO**. Any person employed by the city and assigned to the Department and charged with enforcement of this article and other animal laws or with any other task assigned by the Mayor from time to time.

AT LARGE. An animal on or off the premises of the owner that is not restricted by a secure fence or secure facility or on a leash controlled by a person capable of controlling the dog. Verbal commands do not constitute control.

COMPANION ANIMAL. A dog or cat including a hybrid.

CONFISCATE. The seizure of an animal by an ACO, police officer or other public official to protect the animal, other animals or the public.

CUSTODY. Possession and control of a dog by a person.

DANGEROUS DOG. A dog that has, without provocation, caused serious injury, great bodily harm, or mortal injury to a person or companion animal; or was previously designated as a potentially dangerous dog and subsequently: (1) causes injury to a person or companion animal that is less severe than a serious injury; or (2) is observed by any person chasing or menacing a person or companion animal in an aggressive manner and without provocation. Police dogs are excepted from the definition.

DEPARTMENT. The City of Albuquerque Animal Welfare Department, its animal service officers and agents.

DEPARTMENT WEBSITE. An internet site maintained by the Department and accessible by the public and containing among other things a database pertaining to dangerous dogs.

DOG EXERCISE PARK. Any tract designated by the city for use by persons and dogs where dogs may be off leash and allowed to run free.

GREAT BODILY HARM. An injury to a person or companion animal which (1) creates a high probability of death; (2) results in serious disfigurement; (3) results in loss of any member or organ of the body; or (4) results in permanent or prolonged impairment of the use of any member or organ of the body.

HARNESS. A well fitting apparatus that is not abrasive and restrains the dog by the body and shoulders without involvement of the neck.

HEARING OFFICER. The City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994).

HUMANELY DESTROYED. Euthanized by a method commonly approved by veterinarians or the Mayor.

HYBRID. An animal created by breeding animals of different species. Dogs, wolves and coyotes are different species for purposes of this definition. If a dog is a hybrid, the owner and dog shall not be exempt from any of the provisions of Angel's Law.

IMPOUND. Delivery and arrival of a dog to the Department for processing as under the Humane and Ethical Animal Rules and Treatment Ordinance.

INTACT. A dog over six months old that is not spayed or neutered.

IRRESPONSIBLE OWNER. An animal owner deemed incapable or unable to safely or humanely own an animal.

LICENSED. A dog with a valid city license.

MAYOR. The Mayor of the City of Albuquerque or his or her designated representatives.

MICROCHIP. A passive transponder which can be implanted in an animal by injection and which is a component of a radio frequency identification (RFID) system. A system not compatible with the scanner used by the Department is not a **MICROCHIP**.

NOTICE OF APPEAL. A written notice from any person aggrieved by any action under this article which shall be in writing and state the action appealed from, the date the action or requirement was imposed and the grounds for the appeal.

OWNER. A person who possesses, harbors, keeps or has control or custody of a dog or, if that person is under the age of eighteen, that person's parent or guardian.

PERSON. An individual, household, firm, partnership, corporation, company, society, association or legal entity, and every officer, agent or employee thereof.

POTENTIALLY DANGEROUS DOG. A dog that may reasonably be assumed to pose a threat to public safety as demonstrated by the following behaviors:

- (1) Causing an injury to a person or companion animal that is less severe than a serious injury;
- (2) Chasing or menacing a person or companion animal in an aggressive manner and without provocation; or
- (3) Acting in an aggressive manner within a fenced yard or enclosure and appearing able to jump out of the yard or enclosure.

PROPER ENCLOSURE. Secure confinement in-doors or confinement by means of a secure fence.

PROPERTY. Real property where a dog is regularly found or observed by any person who would reasonably conclude that the dog is present on the property by virtue of the fact that the dog is owned and in the custody of the owner or occupant of the real property.

PROVOKED. A dog that took action in response to a stimulus when a reasonable person would conclude that the dog was defending itself, its owner or an immediate family member of its owner, or another person within its immediate vicinity from an actual assault or was defending real property belonging to its owner or an immediate family member of its owner from a crime being committed on the owner's property at that time. **UNPROVOKED** shall mean the negative and opposite of **PROVOKED**.

REMEDIAL MEASURES. Repairs, modifications, additions or improvements to property or a fence to ensure that a dog cannot escape or a young child cannot enter. **REMEDIAL MEASURES** include but are not limited to signage appropriate to warn passersby, changes to a fence or enclosure of a previously open area.

RESPONSIBLE PERSON. A person at least 18 years old who is familiar with the dog and has the size, strength and experience to be able to keep the dog under complete control at all times.

SECURE FACILITY. A house or building from which any dog including a guard dog cannot escape.

SECURE FENCE. A barrier adequate to prevent a dog from leaving real property upon which the dog is or should be kept and to prevent young children from entering real property.

SEIZE. To take custody and control of dog.

SERIOUS INJURY. Any physical injury, that does not rise to the level of great bodily harm, that results in broken bones or lacerations that require medical attention involving multiple sutures or comparable methods for wound closure or cosmetic surgery.

STERILIZED. Humanely and professionally rendered incapable of procreation.

WARNING AND NOTICE OF REINSPECTION. A written document issued to a person or posted at the property and requiring remedial measures or other changes within a specified time period, informing occupants that the city will conduct a follow up inspection and informing occupants that failure to comply with the warning will lead to further legal action by the city.

(Ord. 2-2005; Am. Ord. 31-2007; Am. Ord. 2016-009)

§ 9-17-4 POTENTIALLY DANGEROUS DOG.

(A) *Designation as potentially dangerous dog.* Any person may report a potentially dangerous dog to the Department. Persons may make anonymous reports and the Department shall respond to anonymous reports under this article. Pursuant to any such report or otherwise, the Department shall seize and impound any at large dog in the ordinary manner or, if the dog is known to be found on a particular property, initiate an investigation and inspection of the property. After the inspection and investigation, the Department shall determine whether the dog is in fact a potentially dangerous dog. Police dogs are excepted from the designation. If the Department determines that the dog is a potentially dangerous dog, the Department shall so apprise the owner of the dog by written notice sent by certified mail, hand delivered, or conspicuously posted on the property, which notice shall constitute actual and constructive notice. The owner may request an administrative hearing concerning the Department's determination that the dog is a potentially dangerous dog. The Department may impose remedial measures or require the owner to submit to any counseling or classes approved by the Department on the topic of owning a potentially dangerous dog. Without regard to whether the dog has been designated a potentially dangerous dog, no person shall chain, tie, or otherwise affix a dog to any stationary object for more than one hour in any 24 hour period. Any person may apply to the Department for a tethering permit.

(B) *Potentially dangerous dog response.*

(1) *Seizure for immediate danger.* Following notice of the determination of a potentially dangerous dog to the owner, if the Department has probable cause to believe that the dog may pose an immediate danger to public safety, the Department may obtain a search warrant and impound the dog or impound the dog at the owner's request or with the owner's consent. If the owner requests a hearing, the dog shall remain in protective custody at the Department pending adjudication. The Department shall impose remedial measures or deliver a Warning and Notice of Reinspection while the matter is pending a hearing. No private contract or covenant is a defense to Angel's Law. If the dog is impounded more than ten days with no response from the owner, the dog becomes the city's property and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance. The dog shall not be placed for adoption if the Department determines that the dog poses a danger to any potential adopter or the public.

(2) *No immediate danger.* If the potentially dangerous dog does not pose an immediate danger to public safety and remedial measures or owner education may reasonably provide public safety, the Department may allow the dog to remain on the property pending adjudication and issue a Warning and Notice of Reinspection. If the inadequate conditions stated in the Warning and Notice of Reinspection are not cured by the time of the follow-up inspection, the Department shall seek a warrant for seizure of the dog, and if so obtained the Department shall seize the dog. The owner may file an appeal as provided by this article. If the dog is not on the property at the time of a failed reinspection and not surrendered at that time but subsequently located on the property or at large, the owner is in violation of § 1-1-99 ROA 1994 and the dog may be seized when discovered by the Department. The Department may impose reasonable remedial measures pertaining to any potentially dangerous dog or the property and shall seize the dog upon any breach of a remedial measure imposed. If the Department does not impose remedial measures or seize a dog at a point in time, the Department is not precluded from those actions or other remedies in the future if conditions change or the Department receives a subsequent citizen report.

(Ord. 2-2005; Am. Ord. 2016-009) Penalty, see § 9-17-99

§ 9-17-5 DANGEROUS DOG.

(A) *Dangerous dog designation.* The Department may determine that a dog is a dangerous dog in accord with this article. If the determination is upheld by a Hearing Officer or the determination is not appealed by the owner, then the dog shall be immediately sterilized and microchipped (if not already microchipped) and the microchip number supplied to the Department. The Department shall document and register the microchip number, a description of the dangerous dog, the address of the property owner and the name and date of birth of the owner and maintain the foregoing in a database available to the public ten years from the date of first registration. The Department may convert a potentially dangerous dog to dangerous dog status upon a breach of any condition pertaining to the potentially dangerous dog. A dog does not have to bite a person or animal to be deemed a dangerous dog under Angel's Law. If a dangerous dog causes harm, the owner is civilly liable as a matter of law and further shows that the owner knew or should have known about the propensity for harm. If the Department determines that the dog is a dangerous dog, the Department shall so apprise the owner of the dog by written notice sent by certified mail, hand delivered or conspicuously posted on the property. The owner may request an administrative hearing. This article does not abrogate the Department's duty and authority to humanely destroy dogs as required under other laws. The owners of dangerous dogs must comply with all other legal requirements pertaining to dogs including but not limited to licensing and vaccinations. The Department shall implement policies, regulations, or procedures establishing criteria to evaluate the adoptability of dogs that are in the custody and control of the Department, which shall define when dogs shall not be considered suitable for adoption. If a dog is determined to be unadoptable, the Department shall not place it in the general population or for adoption. The Department may transfer ownership and custody of such dogs to third party organizations specializing in the long-term care of unadoptable dogs only when such organizations retain sole permanent custody and ownership over unadoptable dogs and whose policies prohibit the adoption, fostering, or transferring of unadoptable dogs. No private contract or covenant is a defense to Angel's Law.

(B) *Dangerous dog response.*

(1) *Seizure for attacks resulting in mortal injury.* If the Department determines that a dog has mortally wounded a person or companion animal without provocation, the Department shall immediately seek to obtain a warrant from a court of competent jurisdiction to seize the dog or seize the dog with the consent of the owner. Such dog shall remain in the custody of the Department pending adjudication and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance. If the owner does not request a hearing within ten calendar days, or if the Hearing Officer upholds the Department's determination that the dog has mortally wounded a person or companion animal without provocation, such dog shall become the property of the Department and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance.

(2) *Seizure for attacks which result in great bodily harm.* If the Department determines that a dog has caused great bodily

harm as defined herein, to either a person or companion animal without provocation, the Department shall immediately seek to obtain a warrant from a court of competent jurisdiction to seize the dog, or seize the dog with the consent of the owner. Such dog shall remain in the custody of the Department pending adjudication and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance. If the owner does not request a hearing within ten calendar days, or if the Hearing Officer upholds the Department's determination that the dog has caused great bodily harm to a person or companion animal without provocation, then the Hearing Officer shall make a determination under the specific circumstances as to the disposition of the dog. The Hearing Officer shall rule that the dog will either, (1) become the property of the Department to be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance, or (2) that the dog be returned to its owner subject to, but not limited by, the restrictions for dangerous dogs contained herein.

(3) *Potential seizure for attacks resulting in serious injury.* If the Department determines that a dog has caused a serious injury, as defined herein, to a person or companion animal without provocation, then the Department may immediately seek to obtain a warrant from a court of competent jurisdiction to seize the dog or seize the dog with the consent of the owner. If seized, such dog shall remain in the custody of the Department pending adjudication and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance. If the dog is seized by the Department and the owner does not request a hearing within ten calendar days, such dog shall become the property of the Department and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance. If the Hearing Officer upholds the Department's determination that the dog caused a serious injury upon a person or companion animal without provocation, the dog shall be deemed dangerous, and shall be subject to the terms and restrictions pertaining to a dangerous dog as contained herein.

(4) *Subsequent attack by dangerous dogs.* If a dog previously determined to be a dangerous dog commits a subsequent unprovoked attack on a person or companion animal, the Department shall immediately seek to obtain a warrant from a court of competent jurisdiction to seize the dog or seize the dog with the consent of the owner. Such dog shall remain in the custody of the Department pending adjudication and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance. If the owner does not request a hearing within ten calendar days, or if the Hearing Officer upholds the Department's determination that the dog committed a subsequent unprovoked attack after having previously been deemed dangerous, such dog shall become the property of the Department and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance.

(5) *Notice.* Notice of the dangerous dog designation (if not previously so designated) and any seizure shall be hand-delivered to the owner of the dog, or if not available, posted at the property and mailed to the owner by certified mail. If the dog is seized, the notice shall state that the dog shall remain in the custody of the Department pending adjudication. If the Department will be seeking to take permanent possession of a dog, the notice shall also so apprise the owner.

(C) *Requirements for dangerous dogs.* All dangerous dogs must be sterilized without regard to any previously issued permits. The Department shall list dangerous dogs, including the address of the property where located, on the Department Website. Dangerous dog owners must allow inspections of the property by the Department at any reasonable time of day. The Department may charge reasonable fees for inspections and assess fines for failures of compliance on a list of fees and fines promulgated from the Department from time to time. If the owner refuses an inspection, the Department shall seize the dog under law and may humanely destroy the dog. The Department may impose remedial measures pertaining to dangerous dogs on one or more occasions. The Department may require the owner to submit to educational requirements for owners of dangerous dogs or socialization or other classes for the dog from time to time. Without limitation on the foregoing, the following requirements pertain to dangerous dogs:

- (1) Dangerous dogs are not allowed in dog exercise parks and may not be taken off the property except on an adequate leash.
- (2) When off the property, dangerous dogs shall be on an adequate leash and under the constant control of a responsible person. Dangerous dogs shall not be transported in a vehicle that might allow the dangerous dog to escape or gain access to any person or animal outside the vehicle.
- (3) A dangerous dog shall not be chained, restrained or otherwise affixed to any stationary object at any time unless under the immediate and constant observation, care and control of a responsible person. Tethering permits shall not be issued for dangerous dogs.
- (4) Dangerous dogs must be confined on the property by a secure fence or secure facility. Neither verbal commands nor electronic fences are sufficient.

(5) No person convicted of animal cruelty or animal fighting in any jurisdiction at any time is allowed to own a dangerous dog or function as the responsible person pertaining to a dangerous dog. The Department shall seize a dangerous dog whenever any evidence of animal fighting is present on the dangerous dog, on any other animal on the property, or on the property. Any person who is registered with the Department and conceals or fails to inform the Department that they have been convicted of animal cruelty or animal fighting is subject to the criminal penalties in § 1-1-99 ROA 1994 for each day of possession of a dangerous dog in violation of

this paragraph. The owner may request a hearing if the Department takes action under this paragraph.

(6) An owner of a dangerous dog shall at all times have an insurance policy with coverage of a minimum of \$500,000 pertaining to injury to any person or property caused by the dangerous dog. The Department may increase the minimum coverage amount from time to time by regulation.

(7) The owner of a dangerous dog shall not sell, loan, transfer, give, devise, board or otherwise convey ownership or custody and control of a dangerous dog to any other person without notifying the recipient in writing that the dog is a dangerous dog and notifying the Department ten days prior to any change in the location of the property upon which the dangerous dog is or should be kept.

(8) Dangerous dogs shall never be allowed access to, or allowed within the proximity of, a young child unless the child lives in the same household as the dog and the dog is under the immediate and constant control of a responsible person.

(9) No lessee shall own or possess a dangerous dog on a leasehold without the written consent of the lessor.

(Ord. 2-2005; Am. Ord. 2016-009) Penalty, see § 9-17-99

§ 9-17-6 IRRESPONSIBLE OWNERS.

An Animal Service Officer may determine under Angel's Law or other laws that a person is an irresponsible owner. A violation of Angel's Law, or a violation of any city ordinance or state law prohibiting cruelty to animals and/or animal fighting, or a violation of any city ordinance or state law governing animal possession limits, is a basis for the Animal Service Officer's determination that a person is an irresponsible owner. If an Animal Service Officer determines that a person is an irresponsible owner, the Animal Service Officer shall so apprise such person by written notice sent by certified mail, hand delivered or conspicuously posted on the property. Any person determined to be an irresponsible owner has a right to appeal the determination by requesting a hearing. If the determination is upheld by the Hearing Officer, or the person fails to appeal the determination within the applicable time from the date of notice, then the Hearing Officer shall order that such person is barred from the ownership, custody or control of dogs or hybrids in the City of Albuquerque for so long as the Hearing Officer deems necessary. The order shall be in writing delivered by certified mail, hand delivered or conspicuously posted on the property. Transient irresponsible owners may be served by publication. The order may be appealed but shall remain in force unless overturned by the Hearing Officer or a court of competent jurisdiction. An owner may petition the Hearing Officer for removal of the irresponsible owner order two years after the date served but bears the burden of clear and convincing evidence. Any person who owns a dog after the date of designation as an irresponsible owner is subject to a continuing violation of § 1-1-99 ROA 1994. The City Council and the Mayor want Angel's Law to be strictly enforced by the courts.

(Ord. 2-2005; Am. Ord. 2016-009) Penalty, see § 9-17-99

§ 9-17-7 HEARINGS.

(A) Any person aggrieved by this article may file a Notice of Appeal on a form obtained from the Department or the City Clerk. The Notice of Appeal shall be filed with the City Clerk ten calendar days including weekends and holidays from the date of the action appealed from. The Hearing Officer shall schedule and hold a hearing within 15 days from the date of the Notice of Appeal unless a continuance is sought and obtained from the Hearing Officer in which case the 15-day period shall be tolled. Exhaustion of administrative remedies is a predicate to any court action. No administrative remedy, remedial measure, seizure or other action by the Department is stayed on appeal except that any decision by the Department to humanely destroy a dog that is subject of an appeal under this article shall be stayed pending the outcome of the appeal.

(B) The Hearing Officer is in charge of the proceedings and may exclude any person for inappropriate conduct. The rules of evidence are relaxed. The appeal is administrative in nature. The Hearing Officer may consider and give appropriate weight to hearsay or any competent extraneous evidence relied upon by an ASO to take action under Angel's Law. The appellant dog owner must prove by a preponderance of the evidence that the state action is unreasonable or arbitrary and capricious. The Hearing Officer shall render a written decision served upon all interested parties within 15 days from the date the hearing is completed.

(C) Any owner appealing a notice of potentially dangerous dog or dangerous dog determination shall be entitled to request a hearing as described by this subsection. Such hearings shall be administrative in nature. The owner shall have the right to orally argue his or her case and to call witnesses and present evidence on his or her behalf. The owner is not entitled to confront any private person who reported the matter to the Department. The owner may appear with licensed attorney representation or may appear pro se. Within 15 calendar days of the conclusion of the hearing, the neutral hearing officer shall render a written decision supported by findings of fact and conclusions of law which shall be served upon all interested parties. In any hearing where the Department is seeking permanent possession of a dog, the owner shall also have the right to cross-examine any witness called to testify by the Department or city at the

hearing.

(D) Any person appealing the Department's determination that the person is an irresponsible owner shall be entitled to request a hearing as described by this section. Such persons must prove by clear and convincing evidence that they were in fact responsible at the time of the Department's order or that circumstances have changed such that the person is now able to humanely and responsibly own a dog in the city. The Hearing Officer shall render a written decision supported by findings of fact and conclusions of law served upon all interested parties within 15 days from the date the hearing is completed. The Hearing Officer may affirm, reverse or remand to the Department with written instructions.

(Ord. 2-2005; Am. Ord. 2016-009)

§ 9-17-99 PENALTY.

Any violation of this article subjects the violator to the penalty provided by § 1-1-99 ROA 1994 and each day of a continuing violation is a separate petty misdemeanor offense. Any violation of this article is not a lesser included offense for a violation of a similar provision of any other law.

(Ord. 2-2005)